IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

MFA.No. 31 of 1997()

WCC.323/1995 of W.C.C.,KOZHIKODE
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APPELLANT -APPLICANT:

E.K. JANARDHANAN, S/O. CHANDAPPAN,
RESIDING AT EDAPPATHANKANDY HOUSE,
VIYYUR, KOLLAM KOZHIKODE DISTRICT.

BY ADV. SRI.S.KRISHNAKUMAR

RESPONDENTS - OPPOSITE PARTIES:
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1. **E.K. PRABHAKARAN, RESIDING AT EDAPPATHAMKANDY HOUSE, KOLLAM P.O., KOYILANDY KOZHIKODE DISTRICT.**

2. **M/S. THE ORIENTAL INSURANCE COMPANY LIMITED, BRANCH OFFICE, PRAMOD BUILDING, CHEROOTTY ROAD, KOZHIKODE.**

BY ADV. SRI.MATHEWS JACOB (SR.)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/04/2007, ALONG WITH MFA NO. 1583 OF 1996 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1583 OF 1996

AND

M.F.A. NO. 31 OF 1997

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Dated this the 9th day of April, 2007

J U D G M E N T

Miscellaneous First Appeal No.1583 of 1996 is filed by the second opposite party-Insurer in W.C.C. No.323 of 1995 on the file of the Commissioner for Workmen's Compensation, Kozhikode. Miscellaneous First Appeal No.31 of 1997 is filed by the applicant in the aforesaid WCC. For the sake of convenience, the parties will be referred to as arrayed in the WCC.

2. Applicant was a Driver by profession. He was driving an Autorikshaw bearing Reg. No.KL-11/D-2166 owned by the first opposite party. At about 4.00 p.m. on 27.8.1995 applicant met with an accident in which he sustained injuries. The applicant claimed that he is earning a monthly income of Rs.2,000/- and hence entitled to get a compensation of RS.1,00,000/-. The Deputy Labour Commissioner found that the applicant sustained an employment injury. Though the applicant produced a

disability certificate issued by the Assistant Professor of Surgery attached to the Medical College Hospital to the effect that the applicant sustained 30% permanent disability and he has difficulty in driving a motor vehicle, the Commissioner reduced the loss of earning capacity to 15% and awarded compensation as per the schedule after amendment. Challenging the compensation awarded, the Insurer has filed M.F.A. No.1583 of 1996. Applicant filed M.F.A. No.31 of 1997 complaining the inadequacy of the compensation awarded by the Commissioner.

3. Applicant produced Exhibit A1 accident-cum-wound certificate, Exhibit A2 reference card of Medical College Hospital, Kozhikode and Exhibit A6 disability certificate issued by the Assistant Professor of Surgery attached to the Medical College Hospital. The Doctor had assessed permanent disability at 30%. The Doctor has also stated that there was restricted movement of ankle joint, swelling of the ankle joint due to oedema and weakness of the left foot due to nerve damages. However, the Commissioner reduced the earning capacity to 15% mainly on the

ground that he was unable to see the injuries noted by the Doctor on the leg of the applicant. The Doctor has opined that on the date of examination there was swelling on the ankle joint due to oedema and restricted movement of ankle joint which cannot be visible with a naked eye. So there is no justification in reducing the loss of earning capacity to 15%. The Doctor has specifically stated the petitioner will not be able to carry on the profession as a Driver. So, I am of the view that the Commissioner ought to have accepted the loss of earning capacity as assessed by the Doctor, i.e., 30%. The Commissioner also went wrong in taking Rs.2,000/- as monthly salary, because the accident occurred prior to amendment. He ought to have taken Rs.1,000/- as the monthly salary. So taking Rs.1,000/- as the monthly salary, the applicant will be entitled to compensation as stated below:

$$"\frac{1000 \times 50 \times 199.40 \times 30}{100 \times 100} = 29{,}910$$

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In the result, both the appeals are allowed as indicated above. The appellant-applicant is entitled to get the above compensation awarded by this Court which will carry simple interest at the rate of 6% per annum from the date of petition till date of realisation. If the Insurance Company has deposited the amount, the claimant is entitled to withdraw the same. However, if any excess amount is deposited by the Insurer, the same shall be refunded to it.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1583 OF 1996
AND
M.F.A. NO. 31 OF 1997

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J U D G M E N T

9TH APRIL, 2007